IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16842 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 3 - Petitioner(s)

Versus

MR KADAR - Respondent(s)

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Appearance :

MS MEGHA JANI for Petitioner(s) : 1 - 4.
MR YV SHAH for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 13/09/2005

ORAL JUDGMENT

In the present petition, the petitioners who represent the Railway Administration, have challenged the legality of the order dated 4th December 2003 passed by the Labour Court, Godhra. By the impugned order, the

Labour Court was pleased to direct the petitioners herein to pay a sum of Rs.23,464/- towards difference in pension plus a sum of Rs.10,000 towards difference in gratuity and an amount of Rs.5,000/- towards difference in leave encashment in favour of the respondent herein.

2. Broadly stated, the controversy before the Labour Court was that the respondent who had retired on superannuation was paid pension on the basis of his last basic salary of Rs.2525/- when he retired with effect from 31.7.92. The case of the workman, however, was that at the time of his retirement, he was drawing basic salary of Rs.2825/- per month. The Railway Administration contended before the Labour Court that pay fixation of the workman was erroneous and on account of two increments being released in favour of the workman in the year 1986, this anomaly had arisen and eventually his pay fixation was corrected and he was placed in the correct basic pay of Rs.2225/-. He eventually retired in the basic salary of Rs.2600/- per month. It was on account of this modification that the respondent was not paid the difference in pension and other retiral benefits. The Labour Court turned down the defence finding that the workman had retired with the basic pay

of Rs.2825. It is not in dispute that before seeking to correct the pay fixation, the petitioner had not given an opportunity of being heard to the respondent.

3. Though extensive arguments were made before me regarding the maintainability of the recovery application being filed directly without first getting the rights crystallized and number of decisions of the Hon'ble Supreme Court and this Court were cited by both the sides, in the facts of the present case, I do not think it necessary to examine this aspect of the matter. In an order dated 16th April 2004 passed in Special Civil Application No.4640 of 2004, learned single Judge of this Court had under identical situation rejected the petition of the Railway Administration. The said petition was directed against an order passed by the same Labour Court in a recovery application filed under similar circumstances. The learned single Judge was pleased to reject the petition observing that admittedly no opportunity was given to the employee concerned before correction of the mistake in his pay-scale. Considering the said decision and considering that the employee retired as far back in the year 1992, I do not find it appropriate to entertain the present petition. The view

of the Labour Court regarding the maintainability of the recovery application directly would not be a binding precedent for other similarly cases in future. Subject to these observations, the petition is rejected. Rule is discharged. Interim relief granted earlier stands vacated.

(Akil Kureshi, J.)

(vjn)